

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant: Gividen et al.

Serial No.: 10/664,383

Filed: September 17, 2003

For: Container

Group: 1761

Examiner: Reginald Alexander

**LETTER IN RESPONSE TO NON-COMPLIANT
APPEAL BRIEF UNDER 37 C.F.R. §41.37**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 2233-1450

Sir:

Appellants submit that a bona fide attempt has been made in order to comply with the Examiner's requests in the Notification of Non-Compliant Brief mailed 19 September 2007. The brief submitted herewith is believed to comply with such requests.

In the event any questions remain, the Examiner is kindly invited to contact the undersigned counsel at his earliest convenience.

Respectfully submitted,



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Attorney Docket No.: F3317(C)
Serial No.: 10/664,383
Filed: September 17, 2003
Confirmation No.: 4419

BRIEF FOR APPELLANT

Sir:

This is a Brief on Appellants' Appeal from the Examiner's Final Rejection concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our Deposit Account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; 37 C.F.R. §1.136.

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I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal is Unilever Bestfoods, a corporation of the State of New York.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1, 4, 5, 10, 13 and 14, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

IV. STATUS OF AMENDMENTS

A Reply (under 37 CFR §1.116) after the Final Rejection was filed on September 5, 2006. The Reply was considered by the Examiner and no Amendments were presented after the Final Rejection.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention set forth in the claims on appeal is directed to a lid and a container with such lid. The lid and the container can be used for serving beverages which are infused. Independent claim 1 describes a container with a receptacle for holding liquid and a lid capable of gripping a string attached to an infusion bag within the container. Support for independent claim 1 may be found, among other places, on page 2 of the specification, lines 10-17 and as originally filed. Further support for independent claim 1 may be found, among other places, in Figures 1 and 2 where reference numeral 1 represents the lid, 2 represents the circular lip, 3 represents the domed central section, 4 represents a dispensing outlet and 5-7 represent an opening, slit and aperture, respectively. Figures 3, 4

and, 5 for example, show the container 8 and string and tea bag (10 and 11, respectively) present therein.

Independent claim 10, the only additional independent claim, is directed to a lid for a container whereby the lid has an opening that is capable of gripping the string of the infusion bag and whereby the lid may be used with a receptacle as described in independent claim 1. Support for claim 10 may be found, among other places, on page 2 of the specification, lines 19-25 and as originally filed. Regarding the figures, Figure 1 shows the lid with a circular lip 2 and a domed central section 3 with dispensing outlet 4. Figures 2 and 6 further support claim 10 and show a dispensing outlet 4, an opening slit and aperture (5, 6 and 7, respectively). Figure 6 shows further slits 14.

Again, therefore, and at the very least, Figures 1, 2 and 6 illustrate the lid of claim 10 and figures 3, 4 and 5 illustrate the container of claim 1.

No dependent claims are argued separately, thus, the dependent claims are considered herewith as being read in conjunction with the independent claims they depend therefrom. Support for all dependent claims may be found, among

other places, on pages 2-6 of the specification and the figures, all as originally filed.

Moreover, in the Specification, the portion from pages 1-2 (up to line 8) is background. The phraseology used in claims 1 and 10 may be found, for example, on page 2 of the specification as originally filed.

VI. GROUNDS OF THE REJECTION TO BE REVIEWED ON APPEAL

The issue raised in this appeal is primarily one of fact and of the type normally encountered in connection with a rejection made under 35 USC § 103. In particular, the issue is as follows:

Would one of ordinary skill in the art, upon reading Portman et al., (U.S. Patent No. 6,464,099) and Yip (U.S. Patent No. 4,602,557) find it obvious to assemble a container with a receptacle and a lid, and a lid as claimed in this application?

Particularly, would one of ordinary skill in the art find it obvious (under 35 USC

103 and in view of Portman et al. and Yip) to prepare a container with a receptacle and a lid, as depicted in claim 1, whereby the lid has, for example, a first slit with further slits that extend at right angles therefrom and that are aligned with a second portion; and

Would one of ordinary skill in the art find it obvious (under 35 USC §103 and in view of Portman et al.) to prepare a lid, as depicted in claim 10, with, for example, a first slit with further slits that extend at right angles therefrom and that are aligned with a second portion?

VII. ARGUMENT

Rejection Under 35 USC §103

The Examiner has rejected claims 1, 4, 5, 10 and 14 under 35 USC §103(a) as being unpatentable over Portman et al., U.S. Patent No. 6,464,099 (hereinafter '099) in view of Yip, U.S. Patent No. 4,602,557 (hereinafter, '557). In the rejection, the Examiner mentions, in summary and again, that the '099 reference discloses a container for serving infused liquid beverages made from infusion bags having a string and tag attached whereby the container comprises a receptacle for holding liquid, and a lid for the receptacle provided with an opening. Furthermore, the Examiner mentions that the lid has a first portion which is

capable of gripping the string of the infusion bag and a second portion through which the string and the infusion bag can move into and out of the container.

The Examiner relies on the '557 reference for showing a gripping member 24 d' (Figure 4d) with a first slit with further slits that extend at right angles. In view of this, the Examiner believes that the combination of the '099 reference and the '557 reference render the aforementioned claims obvious.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Claim 1

Independent claim 1, as presented, is directed to a container for serving infused liquid beverages made from infusion bags having a string and tag attached. The container comprises a receptacle for holding liquid, a lid for the receptacle provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container. The container also has a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a slit with further slits that extend at right angles therefrom and that are aligned with the second portion further wherein the first slit with further slits results in four right angles.

Claim 5

Independent claim 1 is further defined by dependent claim 5 which mentions that the first slit is sufficient in length such that the tag attached to the string may be pushed through it without bending the tag.

Claim 10

Independent claim 10 is directed to a lid for a container for serving infused liquid beverages from infusion bags having a string and a tag attached, the lid being provided with an opening having a first portion which is capable of gripping the string of the infusion bag and the second portion located on the first portion through which the string of the infusion bag can move into and out of the container. The lid also has a dispensing outlet through which the container drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion, further wherein the first slit with further slits results in four right angles.

Claim 14

Independent claim 10 is further defined by claim 14 which characterizes the lid as one having a first slit with a length that is sufficient such that the tag attached to the string may be pushed through it without bending the tag.

In contrast, and as already made of record, the '099 reference depicts a lid having slits that do not extend at right angles (please see Figure 1c and Figure 1d). Therefore, the slits in the '099 reference create obtuse and acute angles. Turning to Figures 8a and 8b of the '099 reference, shown are slit 61 and 62 that

merely result in two right angles contrary to the four right angles set forth in the presently claimed invention.

The vast deficiencies of the '099 reference are not even remotely cured by the '557 reference. This is true because the '557 reference merely describes a cup having notches on its side. If such notches (like 24a and 24b) of the '557 reference were made within the container described in the '099 reference, the container of '099 reference would not be functional and would leak. In fact, such notches, as described in the '557 reference, would defeat the purpose of having the lid described in the '099 reference.

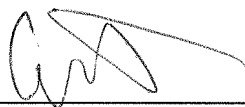
Again, the slits of the current invention create four 90° angles. Therefore, depending on the orientation of the tea bag within the container, the '099 reference describes a container with a lid that requires a different pull or different tension when the consumer is attempting to catch the tea bag within the lid. The deficiencies of the container shown in the '099 reference are cured by the present invention since the slits which create right angles (four right angles) enable for consistent tension or pull in order for the infusion bag to be captured within the lid, regardless of the orientation of tea bag under lid. This is true because the amount of plastic that has to be displaced is equal due to the right angles. The teachings of the '557 reference, again, would result in a defective and leaking container if combined with the teachings of the '099 reference. Thus, the teachings of the references relied on by the Examiner cannot be combined. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner and there is no motivation to combine the references relied on by the Examiner. Therefore, Appellants

respectfully request that the obviousness rejection be withdrawn and rendered moot.

VIII. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1, 4, 5, 10, 13 and 14 under 35 U.S.C. 103.

Respectfully submitted,



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IX. CLAIMS APPENDIX

1. A container for serving infused liquid beverages made from infusion bags having a string and tag attached, said container comprising a receptacle for holding liquid, a lid for the receptacle provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into and out of the container, and a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion, further wherein the first slit with further slits results in four right angles.

| 2-3 (cancelled)

4. A container as claimed in claim 1 wherein the second portion is an aperture that is circular and has a diameter greater than that of the string on the infusion bag.

5. A container as claimed in claim 1 wherein the length of the first slit is sufficient that the tag attached to the string may be pushed through it without bending the tag.

| 6-9 (cancelled)

10. A lid for a container for serving infused liquid beverages made from infusion bags having a string and tag attached, said lid being provided with an opening having a first portion which is capable of gripping the string of the infusion bag and a second portion located on the first portion through which the string of the infusion bag can move into

and out of the container, and a dispensing outlet through which the consumer drinks the beverage wherein the first portion comprises a first slit with further slits that extend at right angles therefrom and that are aligned with the second portion, further wherein the first slit with further slits results in four right angles.

| 11-12 (cancelled)

13. A lid as claimed in claim 10 wherein the second portion is an aperture that is circular and has a diameter greater than that of the string on the infusion bag.

14. A lid as claimed in claim 10 wherein the length of the first slit is sufficient that the tag attached to the string may be pushed through it without bending the tag.

| 15-18 (cancelled)

X. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131 and/or 1.132 is/are submitted herewith.

XI. RELATED PROCEEDINGS APPENDIX

No decisions rendered by a Court or the Board have been made; therefore, no such decisions are submitted herewith.